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OFFICE OF PETITIONS

In re Patent of Gondouin :
Patent No. RE38,636 :
Issue Date: October 26, 2004 : Decision on Petition
Application No. 09/824,738 :
Filing Date: April 4, 2001 :
Attorney Docket No. 02376.0006-01000 : .

This is a decision in response to the petition under 37 CFR 1.377 filed December 19, 2006, requesting the Office determine the instant patent is not expired.

The petition is **GRANTED**.

Facts:

Application No. 07/814,585 issued as Patent No. 5,462,120 on October 31, 1995.

Petitioner filed Reissue Application No. 08/861,457 on May 22, 1997.

The 3.5 year maintenance fee was timely paid for Patent No. 5,462,120 on April 16, 1999.

Petitioner filed four continuation applications based on Application No. 08/861,457:

- (1) 09/824,738 filed April 4, 2001,
- (2) 09/871,813 filed June 4, 2001,
- (3) 09/944,115 filed September 4, 2001, and
- (4) 09/956,806 filed September 21, 2001.

Reissue Application No. 08/861,457 issued as Reissue Patent No. RE37,867 on October 8, 2002.

The 7.5 year maintenance fee and surcharge were paid on June 6, 2003, for RE37,867.

Reissue Application No. 09/824,738 issued as Reissue Patent No. RE38,636 on October 26, 2004.

Reissue Application No. 09/871,813 issued as Reissue Patent No. RE38,642 on November 2, 2004.

Reissue Application No. 09/944,115 issued as Reissue Patent No. RE38,616 on October 12, 2004.

Reissue Application No. 11/038,005 was filed as a continuation of Reissue Application No. 09/956,806 on April 8, 2005. The application is currently pending.

Reissue Application No. 09/956,806 issued as Reissue Patent No. RE39,141 on June 27, 2006.

Discussion:

A review of the facts demonstrates the instant patent is not, and has never been, expired. To the extent any Office records have indicated the patent is expired, the records are hereby vacated.

The Office will schedule a refund of the \$200 petition fee.

PTO records will be updated to indicate the patent has not expired.

As a courtesy, the Office will now discuss the payment of the 11.5 year maintenance fee.

Per the MPEP, when a reissue patent issues based on an original patent, maintenance fee payments should be made for the reissue patent based on the schedule established for the original patent. The MPEP states a maintenance fee does not have to be paid for subsequent reissue patents. MPEP 501 states, "No payment of additional maintenance fees is required for second or subsequent reissue patents, i.e., continuation or divisional reissues (see MPEP 1451), which are derived from a first reissue patent which has issued."

Unfortunately, the Office finance system, RAM, currently updates multiple reissue patents only if the payment is made in the most recent reissue patent to be issued. If petitioner complies with the MPEP, and the Office employee who process the fee fails to recognize the need to move the fee to the newest reissue patent in RAM, problems may arise. Therefore, the Office of Petitions strongly suggests petitioner pay the 11.5 year fee for Reissue Patent No. RE39,141. However, if a reissue patent based on Reissue Application No. 11/038,005 issues prior to payment of the 11.5 year maintenance fee, then the 11.5 year fee should be applied towards the new reissue patent.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



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